

DIA
Freedom of
Information Act
Handbook

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Introduction

The purpose of the Freedom of Information Act (FOIA) is to provide universal right of access to Federal records, that is, data recorded on various media for official purposes as evidence of the organization's mission, policies, decisions, functions, or transactions as a Federal agency.

This handbook is intended to assist you in making a Freedom of Information Act request for The Defense Intelligence Agency (DIA) records. It will get you started and provide you with a brief description of your rights and of the manner in which the DIA will respond to your request.

The FOIA, which is known by its legal citation [5 U.S.C. §552](#), governs how a request will be processed by the DIA. Additionally, the DIA is in compliance with DoD regulation [5400.7-R](#), "[Department of Defense Freedom of Information Act Program](#)," which can be found at Part 286 of Chapter 32 of the CFR.

Note: A sample request letter can be found at the end of this handbook.

Frequently Asked Questions

What is the FOIA?

The Freedom of Information Act (FOIA) is a Federal law that establishes the public's right to request existing records from Federal government agencies.

Who can file a FOIA request?

Any "person," to include U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments, can file a FOIA request.

Who is subject to the FOIA and what type of information can be requested?

The FOIA applies to Federal Executive Branch Departments, agencies and offices, Federal regulatory agencies, and Federal corporations, to include the Defense Intelligence Agency (DIA) as a component of the Department of Defense. However, Congress, the Federal Courts, and parts of the Executive Office of the President, are not subject to the FOIA. State and local governments are not subject to the Federal FOIA, but most states have equivalent access laws for their records.

What is a DIA record?

A DIA record is recorded information, regardless of media, made or received by the DIA in accordance with law or in the conduct of business, preserved or appropriate for preservation, as evidence of the DIA's organization, function, policies, decisions or other activities of the DIA or because of the value of the information it contains. This includes books, papers, maps, photographs, and electronic media that originate with DIA or information that DIA shares equity in the records of another organization.

A record must exist and be controlled by the DIA at the time of the request to be considered subject to DIA FOIA regulations. To satisfy a FOIA request there is no obligation to create, compile, or obtain a record that does not already exist.

Can we ask questions under the FOIA?

The FOIA does not require Federal agencies to answer questions, render opinions, or provide subjective evaluation. Requester must ask for existing records, such as those mentioned above.

Will I receive every record that I request?

Not necessarily. The DIA may determine that it cannot release a record for any one of the following reasons:

1. The requester has not described the record with sufficient detail to enable the DIA to locate it by conducting a reasonable search.
2. The requester has failed to comply with procedural requirements, including payment of fees, imposed by DoD regulations.
3. The request is withdrawn by the requester.
4. "Information" is requested rather than a "record" within the meaning of the FOIA Regulations.
5. The record is denied in whole or in part in accordance with exemptions set forth in the FOIA and DIA Regulations (see pg.7).
6. The requested records would be contained in "Operational" files of the DIA which are exempt from the provisions of FOIA by Section 502 of the Intelligence Authorization Act of 2003.
7. A reasonable search of agency files failed to identify responsive records.
8. The request is transferred to another DoD component or to another Federal agency.
9. Any other reason a requester does not comply with published rules other than those outlined above.

What are the FOIA exemptions?

Records (or portions of records) will be disclosed unless that disclosure harms an interest protected by a FOIA exemption. The nine FOIA exemptions are cited in the FOIA, 5 U.S.C. §552 (b)(1) through (b)(9):

(b)(1)--records currently and properly classified in the interest of national security.

(b)(2)--records related solely to internal personnel rules and practices which if released would allow circumvention of an agency function.

(b)(3)--records protected by another law that specifically exempts the information from public release.

(b)(4)--trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed.

(b)(5)--internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations.

(b)(6)--records which if released would result in a clearly unwarranted invasion of personal privacy.

(b)(7)--investigatory records or information compiled for law enforcement purposes.

(b)(8)--records for the use of any agency responsible for the regulation or supervision of financial institutions.

(b)(9)--records containing geological and geophysical information concerning wells.

Exemptions (b)(8) and (b)(9) typically do not apply to DIA records.

How do I file a FOIA request?

Send a letter by mail to: Defense Intelligence Agency
Attn: DAN-1A (FOIA)
200 MacDill Blvd
Washington, DC 20340

Fax your letter to: 301-394-5356

Email request to foia@dia.mil.

In the request letter:

...state that you are making a FOIA request.

...Describe the specific records you are requesting in enough detail that they can be located with a reasonable amount of effort. Generally, a record is adequately described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized search.

...state your willingness to pay applicable fees. If you seek a fee waiver, provide a justification for such a waiver.

Note: A sample request letter can be found at the end of this handbook.

How long will it take for my request to be processed?

In fairness to all requesters, the DIA processes requests in order by date of receipt and according to their complexity. An initial determination to release or deny records is made within 20 working days after receipt of the request, whenever possible. Under certain conditions expedited access may be granted if there is a compelling need, such as: a threat to life or safety; if a person engaged in disseminating information has an urgency to inform the public on actual or alleged Federal Government activity; an imminent loss of substantial due process rights; or a humanitarian need.

May I appeal a denial?

Yes. If your request is initially denied in whole or in part under one or more of the above exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal within 60 days.

Do I have to pay for a FOIA request?

The FOIA allows fees to be charged to certain categories of requesters; however, it also provides that waivers or reductions in fees be given if disclosing the records is in the public interest, that is, records which significantly enhance the public's knowledge of DIA operations and activities. The FOIA requires that requesters be placed into one of the categories below:

Commercial: Requesters who seek records for a use or purpose that furthers their commercial, trade, or profit interest, pay all fees for search, review and duplication.

Educational: Requesters from educational institutions who seek records in furtherance of scholarly research pay only duplication fees (the first 100 pages are always provided at no cost) unless fees are waived or reduced in the public interest.

Non-Commercial Scientific: Requesters from non-commercial scientific institutions operated solely for conducting scientific research pay only duplication fees (the first 100 pages are always provided at no cost) unless fees are waived or reduced in the public interest.

News Media: Requesters actively gathering news for an entity organized and operated to publish or broadcast news to the public pay only duplication fees (the first 100 pages are always provided at no cost) unless fees are waived or reduced in the public interest.

"Other" Requesters: Requesters who do not qualify in another category and are making requests for agency records for their personal use, receive two hours search, all review costs, and the first 100 pages at no cost.

All requesters should submit a statement of willingness to pay fees regardless of the fee category. The statement, however, does not mean they will be charged.

Except for commercial requesters whose fees total more than \$15, waivers are always considered.

The following factors are weighed in making a fee waiver determination:

The subject of the request; the informational value of the record to be disclosed; the contribution to an understanding of the subject by the general public that is likely to result from the disclosure; the significance of the contribution to public understanding; disclosure of the record is not primarily in the commercial interest of the requester; and the ability of the requester to disseminate the information.

Judicial Review

If you still believe that the DIA has not handled your FOIA request properly under the law after your appeal has been decided, you have the right to challenge the agency's action in a lawsuit filed in federal court. Before doing so, you ordinarily will be required first to have filed an administrative appeal and to have received a response. If the Justice Department fails to respond to either your initial request or your appeal within the time limits discussed above, you may file a lawsuit once the time limits have expired.

If you do bring a court action, you may file your lawsuit in a federal district court in any of the following places: (1) where you reside, (2) where you have your principal place of business (if any), (3) in the District of Columbia, or (4) where the records are located, if they are not located in the District of Columbia. If you have received an administrative appeal determination, that final administrative response letter will advise you of your right to seek judicial review and will specify where you can do so. You have 6 years to file a lawsuit from the time your right to sue begins.

Sample FOIA Request Letter

Date

Dear FOIA Coordinator:

This is a request under the Freedom of Information Act (5 U.S.C. §552). I request that a copy of the following records be provided to me *[identify the documents as specifically as possible]*.

In order to help you determine my status for the purpose of assessing fees, you should know that I am *[insert one of the descriptions below]*:

a representative of the news media affiliated with the [newspaper, magazine, television station, etc.], and this request is made as part of newsgathering and not for commercial use;

affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use;

affiliated with a private business and seeking records for us in the company's business;
or
a private individual doing personal research.

I am willing to pay fees if my request for a waiver is denied [you may put in an amount "not to exceed \$ ____]."

[Optional] I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest. It is likely to contribute significantly to public understanding of the operations or activities of the DIA and is not primarily in my commercial interest [include details about how the requested information will be disseminated by you to the general public.]

[Optional] I include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone number [optional]